inviolate. *Whallon v. Bancroft,* 4 Minn., 109; *Taliaferro v. Lee,* 97 Ala., 92. It is evident that the accused had the right at the time of the adoption of the State constitutions, to have the question of his sanity passed upon by the jury the same as any other question of fact relating to his responsibility for the crime. The legislature cannot entirely destroy, by a process of limitation, the substance of the right of trial by jury, as this constitutional provision means more than the mere form of trial by jury, every substantive fact relating to the guilt or innocence of the accused being included within it. *Cummings v. State of Missouri,* 71 U. S., 277. "Due process of law requires that a party shall be properly brought into court, and that he shall have an opportunity when there to prove any fact which, according to the constitution and the usage of the common law, would be a protection to him or his property." *Witherbee v. Supervisors,* 70 N. Y., 228, 234; *King v. Hopkins,* 57 N. H., 334, 352.

The cases show that the legislature has the power in some cases to eliminate the element of intent. *State v. Constantine,* 43 Wash., 102; but in those cases the man was a free moral agent, and had it in his power to refrain from doing the act. No case can be found where the constitutionality of a law has been upheld which imputes intent to commit crime to an insane person. "There can be no crime without a criminal intent." 4 Blackstone, 20.

It seems from the cases cited, that the question of sanity is a substantive fact, and was such at the time of the adoption of our State constitutions, going to make up the guilt or innocence of the accused, and thus falls within the purview of the above mentioned constitutional provisions; and a State statute, that attempts to abolish insanity as a defense, is in contravention thereof and void.

SYSTEM FOR REPORTING COMMERCIAL CREDITS BY FOREIGN CORPORATIONS HELD NOT TO BE INTERSTATE COMMERCE.

A nice distinction has been drawn by the Kentucky Court of Appeals in the recent case of *The United States Fidelity and Guaranty Co. v. Commonwealth,* 129 S. W. (Ky.), 314, showing to what extent a foreign corporation may go in furnishing intelligence or information through the medium of agents, and yet not be included within the pale of the interstate commerce clause

of the United States Constitution, which vests the regulation of such commerce in Congress. The appellant company, a Maryland corporation, operated a scheme for reporting "credits" in Kentucky through its attorneys. The business was irregular and the attorneys, as found by the court, had no direct connection with the sale of goods.

The doctrine, as laid down by Chief Justice Marshall in the case of *Gibbons v. Ogden,* 9 Wheaton (U. S.), 1, that the mere transmission of intelligence or information from one State to another is interestate commerce, has been universally approved in a multitude of decisions in this country, the latest of which, perhaps, is that of the *International Text Book Co. v. Pigg,* 217 U. S., 91.

In the latter case, the Text Book Company carried on what is known as a "correspondence school." In the conduct of its business it prepared text books, instruction papers, and other educational literature. This literature was transported from Pennsylvania, in which State the company was located, to Kansas, where the student in this particular case resided. The question litigated was whether the furnishing of such intelligence was interstate commerce. *Justice* Harlan, in holding in the affirmative, said, "If intercourse between persons of different States by means of telegraphic information is commerce . . . . we cannot doubt that intercourse or communication between persons in different States by means of correspondence through the mails is commerce among the States within the meaning of the Constitution, especially where, as here, such intercourse and communication really relate to matters of regular continuous business and to the making of contracts and the transportation of books, papers, etc., appertaining to such business." This doctrine was quoted with approval in the principal case and was, perhaps, a determining factor in the court's decision.

In the principal case the guaranty company, organized under the laws of Maryland, was engaged in reporting credits in Kentucky. It employed Kentucky attorneys, who received consideration for their services, to furnish Kentucky merchants, business customers of the appellant, with reports concerning the financial standing of contemplated customers. These customers were residents of Kentucky. The attorneys also agreed to collect bills for these Ken-

tucky merchants. The business of the company was somewhat irregular and none of the information gained by the agents of the guaranty company passed without the borders of the State. But the fact that the attorneys were the duly appointed agents of the foreign corporation led to the conclusion that, as a matter of legal inference, the intelligence passed to the home office of the guaranty company in Maryland, and then back to the Kentucky merchants, even though, as a matter of fact, there is not the slightest scintilla of evidence of such proceedings. Hence, it is readily seen, that the case as made out so ingeniously by the appellant's attorneys, calls for the exercise of some judicial wisdom.

Justice Carroll, in holding that the business of the appellant company was not interstate commerce and thus subjecting them to the State tax, said, "It will thus be seen that these attorneys had no direct relation to or with anything that was the subject of commerce. They did not sell or offer to sell any goods; they did not deliver or offer to deliver any; they did not handle or in any way have the possession of any goods; they did not bring the buyer and seller together, or have anything whatever to do with the transportation of articles or goods, and we are unable to perceive how it can be said, under the broadest construction of the commerce clause, that the reports furnished by these attorneys were instrumentalities in facilitating or carrying on interstate commerce."

That an indirect connection of the business alleged to be interstate commerce with that which is the subject of commerce is not sufficient, but that a direct connection between the two must be established, is another doctrine that has been distinctly affirmed in this country, as manifested by the cases of the *United States v. Swift et al.*, 122 Fed., 529, and *Anderson v. United States*, 171 U. S., 604.

In the latter case, the question was raised as to whether or not the appellants were guilty of forming a combination in restraint of interstate commerce. *Justice* Peckham, in rendering the decision of the court, said: "Where the subject matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct, or restrain that commerce, ... such an agreement will be upheld

as not within the statute . . . . where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental and not its purpose or object."

Regularity in the business sought to be adjudged interstate commerce is another essential element which must be present in the conduct of the intercourse before the court will so act. This is but the result of natural reasoning and has always been adhered to by the courts in rendering their decisions.

In rendering judgment in the case of *International Text Book Co. v. Pigg, supra, Justice* Harlan, as quoted above, laid particular stress on the regularity and continuity of the appellant's business, and *Justice* Carroll, in the principal case, has strongly adhered to a like principle. Concerning this phase of the question, he said: "But we can hardly believe that, merely because a person in one State occasionally writes a letter to a person in another State, that may result in bringing about a contract between the parties, or the exchange of commodities, he can be said to be engaged in interstate commerce. . . . "

In conclusion, it may be said that the Kentucky Court considers three elements, at least, necessary to concur before such commerce can be adjudicated interstate, so as to bring the regulation thereof under the control of Congress. They are: First, the commerce must come from without the State; second, it must have a direct connection with the sale of goods; and, third, the commerce must be regular.

THE RIGHT OF A RESCUER TO RECOVER DAMAGES FOR PERSONAL INJURIES WHEN THE RESCUED HAS BEEN PUT IN DANGER THROUGH DEFENDANT'S NEGLIGENCE.

There is a widespread belief in the doctrine that, if A, seeing B placed in imminent danger by reason of C's negligence, goes to B's rescue and is injured thereby, C is liable to A in damages. It is often found necessary, however, to qualify in several fundamental and essential aspects, the sweeping effect of the rule as commonly stated.